

1 GAY CROSTHWAIT GRUNFELD -- 121944
LISA ELLS -- 243657
2 ROSEN, BIEN & GALVAN, LLP
315 Montgomery Street, 10th Floor
3 San Francisco, California 94104-1823
Telephone: (415) 433-6830
4 Facsimile: (415) 433-7104
Email: ggrunfeld@rbg-law.com
5 lells@rbg-law.com

6 Attorneys for Plaintiffs

E-filing

7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10
11 OCTAVE MUSIC PUBLISHING CORP.;
BOURNE CO.; MUSIC SALES CORP.;
12 HAMPSHIRE HOUSE PUBLISHING CORP.;
13 SONY/ATV HARMONY; OLDE CLOVER
LEAF MUSIC; RAY HENDERSON MUSIC
CO., INC.; WB MUSIC CORP.; ARTHUR
14 HAMILTON d/b/a HARMONY GRACE
PUBLISHING and EDWIN H. MORRIS &
15 CO., INC.,

16 Plaintiffs,

17 v.

18 SEAFOOD PEDDLER OF SAN RAFAEL,
INC. and ALPHONSE SILVESTRI,
19

20 Defendants.

CV 09
Case No.

COMPLAINT

5846

HRL

1 Plaintiffs, complaining of the Defendants, by ROSEN, BIEN & GALVAN, LLP, their
2 attorneys, allege:

3 1. This is a suit for copyright infringement under Title 17, U.S.C. Jurisdiction of this
4 Court is based upon Title 28, U.S.C. § 1338(a).

5 2. Plaintiffs allege eight (8) causes of action for copyright infringement based on the
6 Defendants' public performances of copyrighted musical compositions. SCHEDULE A annexed
7 to the Complaint sets forth in summary form the allegations hereinafter made with respect to the
8 Plaintiffs, their copyrighted musical compositions, and Defendants' acts of infringement.

9 3. Plaintiffs named in Column 2 (all references to columns are to columns in
10 SCHEDULE A) are the owners of the copyrights in the works listed in Column 3, and are
11 properly joined in this complaint under Rule 20, Fed. R. Civ. P.

12 4. Defendant Seafood Peddler of San Rafael, Inc. is a California corporation which
13 did at the times hereinafter mentioned and still does own, control, manage, operate and maintain
14 a place of business for public entertainment, accommodation, amusement and refreshment
15 known as Seafood Peddler Restaurant, located at 100 Yacht Club Dr., in San Rafael, in the State
16 of California.

17 5. Upon information and belief, Defendant Alphonse Silvestri is a resident of this
18 District and, at all times hereinafter mentioned, was and still is a principal stockholder and
19 President of Defendant Seafood Peddler of San Rafael, Inc., and primarily responsible for the
20 control, management, operation and maintenance of the affairs of said corporation. The acts
21 hereinafter complained of were done with his active assistance, cooperation, acquiescence and
22 procurement, and he derives financial benefit therefrom.

23 6. Musical compositions were and are publicly performed at said place of business.

24 7. The original musical compositions listed in Column 3 were created and written by
25 the persons named in Column 4.

26 8. Each composition was published on the date stated in Column 5, and since the date
27 of publication has been printed and published in strict conformity with Title 17, U.S.C.
28

1 9. The compositions named in causes of action 1 through 4 were registered as
2 unpublished compositions on the dates stated in Column 5.

3 10. The Plaintiffs named in each cause of action, including their predecessors in
4 interest, if any, complied in all respects with Title 17, U.S.C., and secured the exclusive rights
5 and privileges in and to the copyright of each composition listed in Column 3, and received from
6 the Register of Copyrights a Certificate of Registration, identified as set forth in Column 6.

7 11. All of the compositions are now in the renewal term of the copyright, secured by
8 due filing of an application for renewal of copyright in the office of the Register of Copyrights.
9 The Register of Copyrights thereupon issued Certificates of Registration of the respective claims
10 to the renewal of copyrights in the names of those claimants listed in Column 7. The dates and
11 identification numbers of such certificates are set forth in Column 8.

12 12. Defendants on the dates specified in Column 9, and upon information and belief, at
13 other times prior and subsequent thereto, infringed the copyright in each composition named in
14 Column 3 by giving public performances of the compositions on Defendants' premises, for the
15 entertainment and amusement of the patrons attending said premises, and Defendants threaten to
16 continue such infringing performances.

17 13. The performances of the Plaintiffs' copyrighted musical compositions on the dates
18 specified in Column 9 on Defendants' premises were unauthorized: neither Defendants, nor any
19 of the Defendants' agents, servants or employees, nor any performer was licensed by, or
20 otherwise received permission from any Plaintiff or any agent, servant or employee of any
21 Plaintiff to give such performances.

22 14. In undertaking the conduct complained of in this action, Defendants knowingly and
23 intentionally violated Plaintiffs' rights. Defendants' knowledge and intent are established by the
24 following facts:

25 a. Defendants have not sought or obtained a license agreement from Plaintiffs
26 or the American Society of Composers, Authors and Publishers (ASCAP), a performing rights
27 licensing organization of which all Plaintiffs are members.
28

1 b. Despite numerous letters and other contacts by ASCAP representatives
2 informing the Defendants of their liability under the United States Copyright Law, Defendants
3 have continued to perform copyrighted music without permission during the hours that
4 Defendants' establishment is open to the public for business and presenting musical
5 entertainment.

6 c. The many unauthorized performances at Seafood Peddler Restaurant include
7 the performances of the eight copyrighted musical compositions upon which this action is based.

8 15. At the times of the acts of infringement complained of, the Plaintiff named in each
9 cause of action was the owner of the copyright in the composition therein named.

10 16. The said wrongful acts of the Defendants have caused and are causing great injury
11 to the Plaintiffs, which damage cannot be accurately computed, and unless this Court restrains
12 the Defendants from the further commission of said acts, said Plaintiffs will suffer irreparable
13 injury, for all of which the said Plaintiffs are without any adequate remedy at law.

14 WHEREFORE, Plaintiffs pray:

15 (1) That Defendants and all persons acting under the direction, control, permission or
16 authority of Defendants be enjoined and restrained permanently from publicly performing the
17 aforementioned compositions or any of them and from causing or permitting the said
18 compositions to be publicly performed in Defendants' said premises, or in any place owned,
19 controlled or conducted by Defendants, and from aiding or abetting the public performance of
20 such compositions in any such place or otherwise.

21 (2) That Defendants be decreed to pay such statutory damages as to the Court shall
22 appear just, as specified in 17 U.S.C. § 504(c)(1), namely, not more than Thirty Thousand
23 Dollars (\$30,000) nor less than Seven Hundred And Fifty Dollars (\$750) in each cause of action
24 herein.

25 (3) That Defendants be decreed to pay the costs of this action and that a reasonable
26 attorney's fee be allowed as part of the costs.

27 ///

28 ///

1 (4) For such other and further relief as may be just and equitable.
2
3

4 Dated: December 14, 2009

Respectfully submitted

ROSEN, BIEN & GALVAN, LLP

6 By: A. C. Grunfeld
7 GAY CROSTHWAIT GRUNFELD
8 Attorneys for Plaintiffs
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Schedule A

Columns	1	2	3	4	5	6	7	8	9
	Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement
1.		OCTAVE MUSIC PUBLISHING CORP.	MISTY	ERROLL GARNER	April 11, 1955 September 2, 1954	EP 90042 EU 369-532 REGISTERED AS UNPUBLISHED	MARTHA GLASER, AS "AN EXECUTOR OF THE COMPOSER ERROLL GARNER, DECEASED," THEODORE PRESENT, AS "AN EXECUTOR OF THE COMPOSER ERROLL GARNER, DECEASED."	3/03/1982 RE 123-364	August 21, 2009
2.		BOURNE CO., MUSIC SALES CORP.	HERE'S THAT RAINY DAY	JOHNNY BURKE, JAMES VAN HEUSEN	June 10, 1953	EP 72610	MARY B. MARCH, AS "THE WIDOW OF THE AUTHOR, JOHNNY BURKE," REGAN BURKE, TIMOLIN BURKE AND RORY BURKE NOVAK, AS "THE CHILDREN OF THE DECEASED AUTHOR, JOHNNY BURKE," JAMES VAN HEUSEN AS "THE AUTHOR"	1/5/1981 RE 91-997	August 21, 2009
3.		HAMPSHIRE HOUSE PUBLISHING CORP.	FLY ME TO THE MOON (A/K/A IN OTHER WORDS)	BART HOWARD	May 17, 1954	EP 80546	BART HOWARD AS "AUTHOR"	2/5/1982 RE 120-979	August 21, 2009

Schedule A

Columns 1	2	3	4	5	6	7	8	9
Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement
4.	SONY/ATV HARMONY	WIVES & LOVERS	HAL DAVID, BURT BACHARACH	October 3, 1963 August 15, 1963	EP 179-892 EU 784-952 REGISTERED AS UNPUBLISHED	"PROPRIETOR OF COPYRIGHT IN A WORK MADE FOR HIRE, BURT T. BACHARACH;" "PROPRIETOR OF COPYRIGHT IN A WORK MADE FOR HIRE, HAL DAVID."	1/14/1991 RE 518-505 1/14/1991 RE 518-531	August 21, 2009
5.	OLDE CLOVER LEAF MUSIC, RAY HENDERSON MUSIC CO., INC.	BYE BYE BLACKBIRD	RAY HENDERSON, MORT DIXON	May 3, 1926	EXXC 640638	MORT DIXON, AS "AUTHOR OF THE WORDS;" AND RAY HENDERSON, AS "COMPOSER OF THE MUSIC"	5/6/1953 R 111-654	August 21, 2009
6.	WB MUSIC CORP.	YOU MAKE ME FEEL SO YOUNG	JOSEF MYROW, MACK GORDON	June 14, 1946	EP 7165	TWENTIETH CENTURY MUSIC CORP. "AS PROPRIETOR OF COPYRIGHT OF WORK MADE FOR HIRE MACK GORDON AND JOSEF MYROW"	12/10/1973 R 565-381	August 21, 2009

Schedule A

Cases 05-cv-03040-TKL Document 1

Columns	1	2	3	4	5	6	7	8	9
	Cause of Action	Plaintiff	Musical Composition	Writers	Date of Publication	Certificate of Registration Number	Renewal	Renewal Certificate Date and Number	Date of Known Infringement
7.		ARTHUR HAMILTON D/B/A HARMONY GRACE PUBLISHING	CRY ME A RIVER	ARTHUR HAMILTON	October 24, 1955	EP 94728	ARTHUR HAMILTON AS "THE AUTHOR OF WORDS AND MUSIC"	1/10/1983 RE 152-354	August 21, 2009
8.		EDWIN H. MORRIS & CO., INC.	MISTER SANDMAN	FRANCIS DRAKE BALLARD (A/K/A PAT BALLARD)	October 18, 1954	EP 84131	HILDA G. BALLARD, AS "WIDOW OF DECEASED AUTHOR OF WORDS AND MUSIC, FRANCIS DRAKE BALLARD A/K/A PAT BALLARD."	1/7/1982 RE 116-499	August 21, 2009